

# Licensing Sub-Committee

## Premise Licence Appeal Hearings – Review of Premises Licence

10 September 2012

### Report of the Head of Public Protection and Development Management

#### PURPOSE OF REPORT

The purpose of this report is to provide an outline of an application for the review of a Premises Licence in relation to G's, Deans Court, Bicester and detail the representations received from relevant authorities that has resulted in a hearing to determine the application.

This report is public

#### Recommendations

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There is no recommendation. In considering the application received and what is appropriate for the promotion of the licensing objectives, the options open to the Sub-Committee are, in broad terms:

1. modify the conditions of the Premises Licence;
2. exclude a licensable activity from the scope of the Premises Licence;
3. remove the Designated Premises Supervisor from the Premises Licence;
4. suspend the Premises Licence for a period not exceeding three months;
5. revoke the Licence;
6. any combination of the above;
7. none of the above.

#### Executive Summary

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##### Introduction

- 1.1 On 23 July 2012, the Licensing Authority received an application for the review of the premises licence held in respect of G's, Deans Court, Bicester.
- 1.2 The Licensing Act 2003 provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

- 1.3 The licensing objectives are:
- The prevention of crime and disorder.
  - Public safety.
  - The prevention of public nuisance.
  - The protection of children from harm.
- 1.4 The application was made by Laura Morris, Licensing Officer on behalf Thames Valley Police who are the Responsible Authority with responsibility for the Crime & Disorder objective under the Licensing Act 2003.
- 1.5 The application regards concerns that the Premises Licence Holders are not promoting the Prevention of Crime and Disorder
- 1.6 A copy of the review application which gives details of the grounds for review and supporting documentation is to be found at **Appendix 1** of this report.
- 1.7 In accordance with the regulations of the Licensing Act 2003, the Licensing Authority displayed the Notice of Review for a period of 28 days starting from the day after the date on which the application was served. The notice was displayed at the premises in question and at Cherwell District Council offices.
- 1.8 The consultation period for the review ended on 20 August 2012.
- 1.9 During the consultation period a response was received from Oxfordshire Trading Standards stating that they had no adverse comments to make. A copy of the response is attached as **Appendix 2** to this report.

## **Background Information**

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- 2.1 The current Premises Licence holder (PHL) is Mr George Samuel Smith of 23 Henley Avenue, Oxford, OX4 4DJ
- 2.2 The current Designated Premises Supervisor (DPS) in respect of this premises licence is also Mr George Samuel Smith.
- 2.3 A copy of the current Premises Licence that is in force which gives details of the licensable activities permitted and the conditions attached to it is attached as **Appendix 3** to this report.
- 2.4 A location map of the premises is attached as **Appendix 5** to this report.
- 2.5 The premises licence first came into force on 24 November 2005, held by Mr George Smith. The licence was granted after an application was received under Grandfather Rights to convert and vary the various existing Justices and Public Entertainment Licences held in respect of the premises.
- 2.6 During the consultation period for the conversion and variation, Thames Valley Police, the Head of Environmental Health and one Interested Party, a local resident, made representations against the grant of the licence in relation to the negative impact upon the Crime and Disorder objective.
- 2.7 As a result of the representations being made, a hearing before the Licensing

Sub Committee was arranged to determine the application. In the period leading up to the hearing, negotiations took place between the applicant's solicitor, Thames Valley Police and the Head of Environmental Health where a number of conditions to be placed upon the licence were agreed.

- 2.8 The conditions related to the dates and times of events to take place, the management and security at the premises along with the arrangements for erotic entertainment at the premises.
- 2.9 The negotiated changes and proposed conditions were put to the Sub Committee who resolved to grant the application, with the relevant amendments to be made on 7 June 2005. The additional conditions were added to the premises licence and can be found at Annex 3, (pages 9 to 11) of **Appendix 3**. A copy of the minutes for the Sub-Committee hearing on the 7 June 2005 is attached at **Appendix 4** for reference.
- 2.10 Following the submittal of an operating schedule by Mr Smith in compliance with the conditions attached to the premises licence in November 2005, a new licence was issued in February 2006 permitting erotic entertainment at the premises. This operating schedule was incorporated into the premises licence that is attached to the report at **Appendix 3**.
- 2.11 On 20 June 2007, an application to vary the Premises Licence was submitted to the Licensing Team at Cherwell District Council on behalf of Mr Smith by Herbert Mallam Gowers Solicitors of Oxford. The application requested permission for erotic dancing on Wednesday nights in addition to the existing permission for Sunday nights from 9.00pm to 1.00am the following morning.
- 2.12 No objections were received in respect of the application and it was duly granted on 20 July 2007. The changes were incorporated into the premises licence that is attached to the report at **Appendix 3**.
- 2.13 In January 2008, following a meeting with Mr Smith and Thames Valley Police, a letter was sent to Mr Smith from the Senior Licensing Officer at Cherwell District Council regarding potential breaches of the premises licence. The premises had been brought to the attention of both Cherwell District Council and Thames Valley Police, giving both authorities cause for concern due to the following matters:
- Sale of alcohol to underage persons
  - Sale of alcohol to intoxicated persons
  - Failure to complete the incident log
  - Behaviour of the door supervisors
  - General management of the premises.
- The result of the letter was a formal request for an action plan to be submitted by Mr Smith addressing the concerns raised by both authorities to prevent any further formal action being taken against him. A copy of the letter sent to Mr Smith by Cherwell District Council can be found at **Appendix 6** to this report.

- 2.14 After further liaisons with both authorities, an action plan was submitted. In

addition to this, Thames Valley Police placed an 8 week probationary period upon the premises to enable them to implement the action plan and improve the management of the premises. The probationary period ended on 7 May 2008. The finalised action plan and supporting documents was submitted by Mr Smith to the Licensing Officer at Thames Valley Police.

- 2.15 In September 2008, a meeting was held between Thames Valley Police and Mr Smith, following a number of incidents occurring at the premises. Correspondence between Thames Valley Police and Mr Smith is included in the application for review, at **Appendix 1**.
- 2.16 On 14 December 2011, the Licensing Team received a letter from the Rt Hon Andrew Smith MP requesting clarification on the powers of the Police and the permissions of Mr Smiths licence. The letter, along with the response from Natasha Barnes, is attached as **Appendix 7**.
- 2.17 In January 2012, it was brought to the attention of the Licensing Team that no payment in lieu of the annual fees for G's had been received. Payment was due by 23 November 2011. Through discussions with the Licensing and Vehicle Parks Manager, an arrangement was made for payment to be made by Mr Smith to avoid formal recovery being put in place. Any future non payments may result in the suspension of the premises licence in accordance with the regulations.
- 2.18 In March 2012, Mr Smith notified the Licensing Team of his intention to use one of his eight annual permissions to extend his opening hours until 04:00 hours from Saturday 24 March into Sunday 25 March, in accordance with the conditions upon his premises licence. The notification was acknowledged by the Licensing Team and Laura Morris of Thames Valley Police on 19 March 2012.
- 2.19 On 23 April 2012, Mr Smith submitted an application for a minor variation to the premises licence, proposing a condition be added to the premises licence restricting the latest entry time on Friday and Saturday nights to 02:15 hours the following morning. This application was granted on 7 June 2012 following negotiations between Mr Smith's solicitors, HMG Law, and Thames Valley Police. The premises licence was updated accordingly and the changes put into effect. All changes have been included in the copy of the premises licence attached at **Appendix 3**.
- 2.20 On 23 July 2012, Cherwell District Council Licensing Team received notice of an application for the review of the premises licence held by G's Wine Bar from the Chief Constable of Thames Valley Police. The full application, including all of its appendices, is attached at **Appendix 1**.
- 2.21 Thames Valley Police have applied for the review of the premises licence in relation to the promotion of the licensing objectives of the prevention of crime and disorder the protection of public safety.
- 2.22 In the application, Thames Valley Police have made the following statement in relation to the grounds for review:

*Thames Valley Police are calling for review of this licence due to the premise not upholding the prevention of crime and disorder and public safety objectives of the 2003 Licensing Act.*

*There are concerns that the premise is unable to effectively control and monitor its customers. The level of intoxication of its customers is unable to be monitored effectively by staff and this then result in disorder inside and outside of the premise. The door staff regularly fails to intervene early in order to prevent instances from escalating.*

*37% of the premises incidents involved some form of disorder and 19% involved assaults, with the majority of these incidents occurring after 1am.*

- 2.23 Further supporting information is included in the application at **Appendix 1**.
- 2.24 On 1 August 2012, Oxfordshire Fire & Rescue Service carried out an audit of safety measures in relation to fire risk at G's Wine Bar and found a number of deficiencies which were notified to the Licensing Officer at Thames Valley Police. The deficiencies will be dealt with under the Fire Service's own regulatory powers to avoid any duplications of legislation. An email detailing all of the deficiencies is attached at **Appendix 8**.
- 2.25 In the email from Oxfordshire Fire Service, potential breaches of the premises licence in relation to the number of door staff in operation was also mentioned. As a result, checks of the premises were carried out by Thames Valley Police in case of any breaches taking place. As a result, it was discovered that only two door staff were on duty and not the required four. As a result, a letter was sent by the Licensing Team Leader at Cherwell District Council regarding the breaches and advising of future actions should further breaches occur. A copy of this letter is attached at **Appendix 9**.

### **Key Issues for Consideration/Reasons for Decision and Options**

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- 3.1 The Licensing Act 2003 states that all licensing matters must promote the four Licensing Objectives, they are:
- The prevention of crime and disorder;
  - Public safety;
  - The prevention of public nuisance; and
  - The protection of children from harm.
- 3.2 Guidance issued under Section 182 of the Licensing Act 2003 states:
- Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is paramount considerations at all times. However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
- Protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;

- Giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- Recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- Providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may impact upon them.

3.3 The relevant sections of the Guidance and Licensing Authority Policy issued under the Licensing Act 2003, which are applicable to the representations for this case are as follows:

**GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003, APRIL 2012:**

Sections	11.1 – 11.12	The Review Process
Sections	11.17 – 11.24	Powers of a Licensing Authority on the determination of a review
Sections	10.10 – 10.19	Proposed Consistency, Consistency with Steps Described in Operating Schedules, Imposed Conditions, Proportionality, Duplication with other statutory provisions
Sections	10.20 – 10.22	Hours of Trading
Sections	2.1 – 2.16	Crime & Disorder

**CHERWELL DISTRICT COUNCIL STATEMENT OF LICENSING POLICY, NOVEMBER 2011:**

Page 1	Policy GN 1	Section 1.1.1	Objectives
Pages 3 - 4	N/A	Sections 2.5.1 – 2.5.13	Fundamental Principles
Page 8	N/A	Sections 2.10.1 – 2.10.2	Non-Licensing Issues
Page 20	Policies LA 5	Sections 7.3.9	Addressing Local Concerns
Page 21	Policy LA 6	Section 7.3.10	General Management and Control
Pages 30 – 31	Policy DPS 1	Sections 7.6.1 – 7.6.5	Designated Premises Supervisor
Page 40	Policies RE1 – RE4	Sections 10.1.1 – 10.1.3	Reviews

Members have been issued with copies of the Guidance, the Statement of Licensing Policy and the Council's pool of conditions and are asked to bring them with them to the meeting.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

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| <b>Option One</b>   | Modify the conditions of the Premises Licence;                        |
| <b>Option Two</b>   | Exclude a licensable activity from the scope of the Premises Licence; |
| <b>Option Three</b> | Remove the Designated Premises Supervisor from the Premises Licence;  |
| <b>Option Four</b>  | Suspend the Premises Licence for a period not exceeding three months; |
| <b>Option Five</b>  | Revoke the Licence;   |
| <b>Option Six</b>   | Any combination of the above;   |
| <b>Option Seven</b> | None of the above.  |

The Licensing Act 2003 at Section 52, Paragraph 11 states:

*“A determination under this section does not have effect-*  
*(a) until the end of the period given for appealing against the decision, or*  
*(b) if the decision is appealed against, until the appeal is disposed of.”*

Schedule 5 of the Act, Section 9 Paragraph 2 states

*“An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days....”*

Therefore any decisions taken at the Review Hearing by the Licensing Sub-Committee will not take effect until the period within which an appeal can be brought has passed, and then following which until the determination of any such appeal.

## **Consultations**

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Full consultation in accordance with the requirements of the Licensing Act 2003 was carried out for a period of 28 days from the date of application for review, ending at midnight on 20 August 2012.

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## Implications

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<b>Financial:</b>	There are no financial implications of this report  Comments checked by Leanne Lock, Technical & Project Accountant 01295 227098
<b>Legal:</b>	The decision must comply with relevant legislation and Council Policy. All parties have a right of Appeal to the Magistrates Court against the decision Comments checked by Paul Manning, Solicitor, 01295 221691
<b>Risk Management:</b>	There is a risk that if policy and legislation has not been correctly followed, any resulting appeal could be successful.  Comments checked by Gavin Halligan-Davis, Community & Corporate Planning Manager, 01295 221563

## Wards Affected

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Bicester Town Ward

## Document Information

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Appendix No	Title
1	Application for the review of the premises licence held by G's Wine Bar
2	Response from Oxfordshire Trading Standards to notification of review application
3	Copy of current Premises Licence held by G's Wine Bar
4	Copy of minutes from Sub Committee Meeting held on 7 June 2005
5	Location plan of premises being reviewed
6	Letter to Mr Smith from Natasha Barnes, Cherwell District Council, January 2008
7	Letter from Rt Hon Andrew Smith MP and response from Natasha Barnes, Cherwell District Council
8	Email from Oxfordshire Fire Service to Thames Valley Police detailing deficiencies at the premises
9	Letter from Licensing Team Leader at Cherwell District Council to Mr Smith warning of possible licence breaches
<b>Background Papers</b>	
Members have been issued with copies of the Guidance, the Statement of Licensing Policy and the Council's pool of conditions and are asked to bring them to the meeting.	

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